IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.07.2007

CORAM:

THE HON'BLE MR.JUSTICE A.P. SHAH, CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE P. JYOTHIMANI.

WRIT APPEAL NOS.494, 812 and 495 of 2007

P. Arunkumar .. Appellant in
WA.No.494&495/2007/Petitioner
in WP.32552/07 & 18384/06

J. Jotheebun .. Appellant in
WA.No.812 of 2007/Petitioner
in WP.No.36500/06

vs.

1.The State of Tamil Nadu
rep. By its Secretary to Government
Education Department
Fort St. George, Chennai 9.

2.Tamil Nadu Dr. M.G.R. Medical
University
No.69 Anna Salai
Guindy, Chennai 32 rep. By
its Registrar.

3.Christian Medical College
Vellore 632 002 rep. By
its Registrar. .. Respondents in
WA.No.494 of 2007

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1.Christian Medical College
Vellore Association
rep. By its Secretary
Vellore, Tamil Nadu.

2.The Permanent Committee for
the Conduct of Common Entrance
Examination in Private Colleges
NCB 7A Greenways Road
Chennai.

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3.The State of Tamil Nadu
rep. By its Secretary (Health)
Fort St. George, Chennai.

4.The State of Tamil Nadu
rep. By its Secretary (Education)
Fort St. George, Chennai.

5.The Tamil Nadu Dr.M.G.R.
Medical University
rep. By its Registrar
40-A, Anna Salai
Chennai 32. .. Respondents in
WA.No.495 of 2007/Respondents 1to4
in WP.No.18364/06

1.Christian Medical College
Vellore 632 002 rep. By
its Registrar
Vellore 632 002
Tamil Nadu.

2.Tamil Nadu Dr. M.G.R. Medical
University
No.69 Anna Salai
Guindy, Chennai 32 rep. By
its Registrar.

3.The State of Tamil Nadu
rep. By its Secretary to Government
Education Department
Fort St. George, Chennai 9. .. Respondents in
WA.No.812 of 2007/Respondent
in WP.36500/06

Writ Appeals are filed under Clause 15 of the Letters Patent Act against the Common Order of the learned single Judge dated 13.02.2007 made in WP.Nos. 32522, 18384 and 36500 of 2006 respectively.

WP 18384/2006:- Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari, calling for the records in proceedings No.SFPC/014/MEDI/2006 dated 10.06.2006 of the Permanent Committee for the conduct of Common Entrance Test for Private Professional Educational Institutions in Tamil Nadu, the first respondent herein to the limited extent of invalidating the reservation upto 6 seats for the children of eligible Members of Staff of the Institution and quash the same to that limited extent.

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WP 32552/2006 :- Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the third respondent to admit the petitioner who is a Minority Candidate from the State of Tamil Nadu pursuant to his marks obtained in the Entrance Examination conducted by the third respondent to the M.B.B.S. Degree Course for the academic year 2006-2007.

WP 36500/2006:- Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the first respondent to admit the petitioner, who is a minority candidate from the State of Tamil Nadu, pursuant to his marks obtained in the entrance examination followed by interview conducted by the first respondent, to the MBBS Degree Course for the academic year 2006-2007 failing which for the academic year 2007-2008.

For appellant : Mr. R. Muthukumarasamy,Sr.Counsel
in WA.494/07 for Mr. K. Ravichandra Babu

For Appellant : Mr. A. L. Somayaji, SC, for
in WA.495/07 Mr. K. Ravichandra Babu,

For appellant : Mr.Vineet Subramani
in Wa.812/07 for Mrs. Gladys Danial

For R3 in WA.494: Mr.Anil Divan,Sr.Counsel
R1 in WA.495/07 Assisted by Mr.Krishna Srinivas &
for M/s. Ramasubramaniam Associates

For R1 in WA.494: Mr. Raja Kalifulla
R3&R4 in WA.495 Government Pleader
& R3 in WA.812/07.

For R2 in WA.494/07 and R5 in WA.495/07/
not Served not appeared

Not ready in Notice reg R1 to R2 in WA.no.812/2007

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COMMON JUDGEMENT

(DELIVERED BY P. JYOTHIMANI,J.)

These writ appeals are directed against the common order passed by the learned single Judge dated 13.02.2007 made in W.P.Nos.32522, 18384 and 36500 of 2006 respectively, by which the writ petitions filed by the Christian Medical College, Vellore in W.P.No.18384 of 2006, stood allowed by setting aside the portion of the order of the Permanent Committee for the Conduct of Common Entrance Examination in Private Colleges, dated 10.06.2006 invalidating allotment of six seats for children of the members of the Staff of the Institution (CMC) and dismissing the other two writ petitions filed by the students in W.P.Nos.32552 and 36500 of 2006.

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2. The first respondent Christian Medical College (CMC), Vellore (hereinafter referred to as "Institution"), is a Christian Minority Un-aided Professional Medical College, affiliated to the Tamil Nadu Dr.M.G.R. Medical University. The said institution is a registered Society, consisting of nearly 53 different Indian Christian Churches and Christian Organisations situated almost all the States in India with the objective of promoting education and consequential health care to students and patients belonging to the length and breadth of India and also several neighbouring countries. This institution has been in existence for the past 100 years, admitting students in Unaided, Non-capitation Fee with minority status based on merit on all India basis by conducting All India Common Entrance Examination, followed by an in-depth interview and the said method is stated to have been in vogue for the past 55 years.

2(a). The said Institution has started its first Post-Graduate programme in 1950 and as on date there are 11 Post-Graduate Medical Diploma courses; 20 Post-Graduate Medical Degree Courses and 9 Higher Speciality courses approved by the Tamil Nadu Dr.M.G.R. Medical University. That apart, there are M.Sc., courses in 4 Medical Sciences and 21 Departments are recognised for Ph.D., training.

2(b). In respect of M.B.B.S. course conducted by the Institution, the total sanctioned strength of the students is 60. Out of the total strength 84% of the seats, viz., 50 seats are reserved for candidates from Christian minority community; remaining 16% of seats, viz., 10 seats are filled up in the following manner:

(i) 7 seats are filled up on all India Open Competition basis;

(ii)2 seats reserved for SC/ST category of students; and

(iii)1 seat for candidate nominated by the Government of India.

The remaining 50 seats are filled up in the following manner:

(i)10 seats are filled up from the Christian candidates from socially and economically backward States;

(ii)Out of the remaining 40 seats, 6 seats are filled up from the children of the eligible members and staff of the Institution in lieu of NRI quota and the remaining 34 seats are filled up from among Christian minority candidates on the basis of All India Open Competition.

2(c). The method of selection is by conducting All India Common Entrance Examination for 40% weightage; Tasks test with 20% weightage and interview by Group Observers with 40% weightage. With regard to Christian minority students, out of the 40% weightage for interview, 10% is for written test on Bible knowledge and the remaining 30% for oral interview. The written tests are conducted for 300 marks in five subjects, viz., Physics, Chemistry, Biology, General ability, Speed and Accuracy. The marks obtained by the candidates are subsequently made in the form of Grade under the "Stanine Grading System" and according to the Institution, selection in the said manner

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is in vogue for the past many years without any complaint whatsoever only based on merit in a transparent manner and without any exploitation.

2(d). It is also the case of the Institution that no capitation fee is collected from the students selected and the tuition fees itself is much less than even the fees fixed by the Government. Since the students belonging to minority are drawn through out India all live together in the campus with practical demonstration and national integration.

2(e). It is the case of the Institution that the students of minority category who are admitted, have to give a commitment to go back after the completion of the Under Graduate education and work for atleast two years in the hospitals run by the Churches. According to the Institution, the process of selection is proved to be a grand success. When the State Government insisted for implementation of the scheme as framed by the Supreme Court in Unni Krishnan's case (1993 (4) SCC 111), the Institution has moved the Supreme Court in 1993 by filing Writ Petition No.482 of 1993 under Article 32 of the Constitution of India, which was admitted and the Supreme Court was pleased to grant interim orders, permitting the Institution to carry on its own admission procedure and similar orders have been passed till 2003. After the judgement of the Supreme Court in Islamic Academy of Education vs. State of Karnataka (2003 (6) SCC 697) in the year 2003, by which the State Government has constituted Two Committees and pending the constitution of such Committees also the Supreme Court has permitted the Institution to follow the previous practice in respect of admission, which has been followed for the past 55 years.

2(f). Likewise, in the year 2004-2005 also when the Committees were yet to be constituted by the State Government, on filing of Writ Petition in W.P.No.7380 of 2004, this Court in WPMP.No.8728 of 2004 has granted an order of interim injunction on 04.03.2004, restraining the respondents therein from interfering with the admission of students to the medical and other courses for the academic year 2004-2005 by the Institution. When a clarification was sought for in the Supreme Court in respect the decision rendered in 2003 (6) SCC 697 (cited supra), in the writ petition filed by Catholic Bishop's Conference of India Society for Medical Education running the institution like St. Johns Medical College, Bangalore, in W.P.No.330 of 2004, the Supreme Court by an order dated 30.07.2004, has clearly recognised the rights of the said institution, including that of CMC, Vellore to follow their own procedure for admission. Ultimately, after that, the institution has also filed an intervening petition in I.A.No.5 of 2005 in W.P.No.330 of 2004. The Apex Court by order dated 12.08.2005 has held that Minority Un-aided Educational Institutions are protected by Article 30(1) of the Constitution of India and they are free to admit all students of their own community and that the States have no right to enforce the policy of reservation on them. At the same time, the Supreme Court has also held that the States were entitled to constitute Committees for monitoring the admission procedure and determining fee structure respectively to avoid exploitation and to preserve merit and transparency in admission.

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2(g). It is the case of the Institution that after the State Government has constituted the Permanent Committee for Common Entrance Test for Private Educational Institutions, it has dismissed the application made by the College on 12.07.2005. The petitioner has filed I.A.No.6 of 2005 in W.P.No.261 of 2003 in the Supreme Court, praying for an order of stay of the Committee and also for direction to the Institution to continue to admit students as per the practice in vogue for the past 55 years. The Supreme Court by an order dated 25.07.2005, while staying the portion of the order of the Committee dated 12.07.2005, permitted the Institution to follow the same procedure of admission as it was held in the year 2004-2005.

2(h). After the Supreme Court has disposed of the batch of cases in P.A. Inamdar vs. State of Maharashtra (2004 (8) SCC 139), the above interim orders passed by the Supreme Court in respect of the Institution have been merged. In the meantime, for admission in the year 2006-2007, the members of the governing council of CMC, Vellore, have devised a new mechanism, by effecting changes based on the observations made by the Permanent Committee in the order dated 12.07.2005. The Committee has taken exception in respect of the filling up of 39 seats based on the sponsorship of candidates from the members of the Churches and Organisations based on interse merit. It was based on the observation of the Committee, the Council governing the Institution has taken a decision that in respect of 34 seats, the selection should be from among the Christian minority candidates on All India Open Competition basis by removing the sponsorship. For the academic year 2006-2007, when the Institution has issued notification for admission of students and at that time when a representation was made to the Committee, the Committee, has permitted the Institution to have its own admission procedure by order dated 10.06.2006, recognising the basis and procedure adopted as being fair and non-exploitative, however, took exception in respect of admission of six candidates from the children of eligible members of the staff of the Institution. It is, as against that portion of the order of the Committee dated 10.06.20096, the College has filed W.P.No.18384 of 2006.

3. The petitioners in W.P.No.32552 and 36500 of 2006 were students, who have applied for admission to MBBS course in the year 2006-2007 and in the Entrance Examination conducted by the Institution, the writ petitioner in W.P.No.32552 of 2006 was given "B" Grade, which is in between 79% to 89%. Likewise, the petitioner in W.P.No.36500 of 2006 was given "B+" Grade in the entrance examination, having obtained the mark between 90 to 96%. They have also participated in the Group Task as well as Interview, in which according to them, they have fared very well. However, they were not selected for the year 2006-2007 and therefore they have filed Writ Petitions for direction against the Institution to admit them based on the marks obtained by them in the Entrance Examination, contending inter-alia that they also belong to the Christian minority, but the method of selection followed by the Institution is not transparent or understandable. It was their further case that the 10 students out of 50 allotted to minority candidates are admitted from the States like North-Eastern States, wherein Christians were non-minority, that

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admission to six students of eligible staff members of the Institution is not legal, that non-publishing of rank list in the Entrance Examination vitiates the process of selection, apart from other grounds. It is also their case that by the selection process followed by the Institution, the triple test enunciated by the Supreme Court, viz., Merit, Transparency and Non-exploitative has not been scrupulously followed and therefore, the selection process is bad. It is their further case that more than 40% marks allotted for interview is against the decision of the Supreme Court, wherein a ceiling limit of 15% marks was fixed for interview. Further, the Institution is not entitled to claim protection under Article 30(1) of the Constitution of India, since it has not admitted predominant students of Christian minority belonging to the State of Tamil Nadu, even though a sprinkling of such students could be admitted from other States.

4. The learned single Judge has formulated the contentions raised on behalf of the said writ petitioners/students in the following five heads, which reads as under:

> " (a) The Institution conducts (i) a Common Written Entrance Examination to which 40% of the marks are allotted, (ii) certain tests terms as "Group Tasks" for which 20% of the total marks are allotted and (iii) an interview for which 40% of the total marks are allotted. In respect of Christian students, the marks allotted for interview are reduced to 30% of the total marks and they are made to write a Written Test in Bible knowledge, to which 10% of the total marks are allotted. Therefore, the first issue raised by the unselected candidates is as to whether an Institution is entitled to allot 40% of the total marks for interview, in the light of various decisions of the Supreme Court fixing a ceiling limit of 15% of marks for interview.
>
> (b) Even the allotment of marks in the Written Examination, Group Tasks and Interview, are not done in a straight, plain and simple manner. The marks are converted at every stage into a system known as "Stanine Grading" and the selection of candidates finally depends upon the grade obtained by them, in the final tally, which according to the unselected candidates failed the test of transparency in the matter of selection.
>
> (c) As a minority educational institution claiming protection under Article 30 of the Constitution, the Institution was obligated to admit a predominant number of students belonging to the State of Tamilnadu, though a sprinkling of such students from other States could also be actually admitted only 5 candidates belonging to the Christian minority community from the State of Tamilnadu, thereby failing the test of "State as

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the unit" for determining the minority status of the Institution.

(d) The reservation of 10 seats made by the Institution for Christian candidates from socially and economically backward States, included within its ambit, candidates from the North Eastern States. Two of the North Eastern States have Christians as the majority population and hence according to the unselected candidates, the selection of Christian students from States in which they form a majority, defeated the purpose of grant of minority status and also violated the law laid down by the Supreme Court.

(e) The question whether the reservation upto six seats for the children of eligible members of the staff of the Institution falls within the frame work of reasonable classification permitted by the Constitution is the last issue raised by the unselected candidates and the same has also been found against the Institution by the Permanent Committee. "

4(a). After considering each and every one of the points raised, the learned Judge, while dismissing the writ petitions filed by the students and allowing the writ petition filed by the Institution has held that, allotting of 40% of the total marks for interview in the selection process adopted by the Institution cannot be blindly held to be vitiated. In respect of the selection process, viz., Stanine Grading, Group Tasks followed by the Institution, the learned Judge has held that, inasmuch as the method of procedure has been adopted for many years even though the process is complicated, it was evaluated by the specialists in the field, and the same cannot be lightly set at naught.

4(b). Regarding the issue relating to the number of students belonging to minority to be admitted from State of Tamil Nadu, the learned Judge, relying on the ratio laid down by the Supreme Court In re Kerala Education Bill, 1957, AIR 1958 SC 956, wherein the "Twin Object Test" was laid down and by taking into consideration of the status of the Institution, which is belonging to Christian minority, conducting examination on all India basis and on the application of the wider sense of the word minority has held that there is no error on the part of the Institution in admitting large number of Christian minority students from other States.

4(c). While dealing with the admission of 10 seats reserved for the Christian students from the States where they are majority, considering that on fact, only one Christian student from Mehalaya State, wherein Christians are majority was admitted, and therefore, the same can be considered only as a sprinkling, which is permitted in Kerala Educational Bill case (cited supra) upto the latest judgement of the Supreme Court in P.A. Inamdar's case (2004 (8) SCC 139), the learned Judge has held that the contention raised in that regard was not tenable.

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4(d). While dealing with the six seats for children of staff members of the Institution, the learned Judge has approved the same on the principle of institutional preference and also on the basis that such preference will strengthen the value base and moral para-meters, for which the Institution stands.

5. It is, as against the said common order of the learned single Judge, the above appeals are filed. The order of the learned single Judge is assailed by the appellants on various grounds, viz.,

> " (i) The procedure adopted by the Institution for selection is unfair and not transparent;
>
> (ii) The stanine grading system is not only un-understandable and in that sense of view, the procedure is not transparent and therefore, the selection based on the same cannot be held to be based on merits;
>
> (iii) The selection process consist of 40% for Entrance Examination while the remaining 60% is in effect allotted for oral interview even though it is stated that 20% is for Group Tasks. In view of the above said predominant role given for oral interview in the selection process, the entire process of selection is vitiated, since the Supreme Court in St. Stephen's case (1992 (1) SCC 558) has held that 15% for the oral interview can be the permissible limit generally;
>
> (iv) In the oral interview, questions were posed to the students which are not only irrelevant to the course to which they have applied, but such questions which can have different answers in common parlance and there are no proper guidelines for the purpose of assessing the value of the students and therefore, the selection process should not be termed as non-exploitative in nature;
>
> (v) The selection process is against the principles laid down by the 11 Judge Bench decision of the Supreme Court in T.M.A. Pai Foundation case (2002 (8) SCC 481).
>
> (vi) The reservation for the Wards of staff is illegal. The seats which are allotted for NRIs cannot be granted to the children of the staff members of the Institution."

6. Mr.R. Muthukumarasamy, learned senior counsel appearing for the appellant in W.A.No.494 of 2007 would submit that the procedure adopted by the Institution is non-transparent and unfair and opposed to the law declared by the Supreme Court in P.A.Inamdar's case (2004 (8)SCC 139).

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6(a) He further submitted that by the process of evaluation of answer sheets in the Entrance Examination, by which the arithmetical marks are converted into stanine grade and later sought to be evaluated for 40%, while the remaining 60% is assigned for Bible test, Group Tasks and interview in the form of 10, 20 and 30 marks respectively, has resulted in the candidates obtaining higher marks in the Entrance Examination to get lesser rank on account of the stanine grading and also in the Group Tasks and oral interview and the said process is opposed to the law laid down by the Supreme Court in T.M.A. Pai Foundation case (2002 (8) SCC 481).

6(b). He would also submit that in paragraphs 58 and 59 of the judgement in T.M.A. Pai Foundation case,the Supreme Court has held that in respect of professional education, greater emphasis must be shown on merit, which is usually determined on the basis of the marks obtained in the qualifying examinations, followed by interview or by common entrance test. Basing reliance on the judgement of the Supreme Court in P.A. Inamdar's case he submits that there should be distinction between professional and non-professional educational institutions and in respect of professional education, merit and excellence alone should be the criteria and by applying the above said tests, according to the learned senior counsel, the procedure should be deemed to be non-transparent and unfair and cannot be termed as merit based.

6(c). He would further submit that allotting of 20% for Group Tasks and 30% for interview shows that the same has no connection with the merit of the candidate at all. It is also his submission that when the applicants are in the age group of 17 to 19 years, such a high percentage given for oral interview can only result in the arbitrariness in the selection process, which will be violative of Article 14 of the Constitution of India as held by the Supreme Court in Ajay Hasia's case (1981 (1) SCC 722). The right of the Institution under Article 30 of the Constitution as a minority institution must be in conformity with Article 14 of the Constitution of India and according to the learned senior counsel, the prescription of marks for interview if it is above 15%, the same is not only violation of Article 14 of the Constitution, but is also against the dictum laid down by the Supreme Court in Ajay Hasia's case.

6(d). He would further submit that the reservation of 6 seats in favour of the children of the staff of the Institution is unconstitutional. He would refer to the order of the Permanent Committee for Common Entrance Test for Private Educational Institutions dated 10.06.2000, wherein the Committee has held that such reservation is not permissible. The learned senior counsel contends that the word institutional preference has a distinct meaning and the children of the staff of the Institution would not fall within the category of Institutional Preference. The classification according to him would not satisfy the twin test of Article 14 and such classification based on constitutionally prohibited category and based on descent, and therefore, it constitutes an unreal classification having no nexus to the object sought to be achieved.

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6(e). He would also submit that the Institution being a minority institution, must cater to the needs of the students of the minority community of the State of Tamil Nadu, in which it is located, by filling up only a sprinkling of seats from minority students of other States. Inasmuch as it is well settled that State is the unit for determining minority status, as observed by the Supreme Court in P.A.Inamdhar's case, and on fact only five students have been admitted from the State of Tamil Nadu in this year, it violates the norms laid down by the Supreme Court.

7. Mr. Vineet Subramani, learned counsel appearing for the appellant in W.A.Nos.812 and 495 of 2007, apart from adopting the arguments of Mr. R.Muthukumarasamy, learned senior counsel, would submit that the individual task for which 20% of marks have been allotted and it took only three minutes for each of the students and the conversation during this short period of time could not be for the actual task matter and only on the subjective issue, which require a high maturity mind and the same cannot be expected from the students of the age group of 16 to 18 years.

7(a). It is also his submission that the Test Observers of each group are different and therefore there is a possibility for different assessment by different staff members and there is no chance for comparison to have a common selection process. He would also refer to the various questions asked in the interview like the opinion of the students about love marriage and arranged marriage, etc. and contend that the same cannot be the ground for selection of students to MBBS course.

7(b). He would submit that by considering the entire process, 60% of total weightage is given to the interview process, which is not permissible. According to him, the appellant has secured "C+" Grade and the Institution has admitted candidates who have secured "C+" Grade, while the appellant was not given admission.

7(c). He would also submit that only 5 candidates belonging to the Christian minority in the State of Tamil Nadu were admitted by the Institution. Further, the reservation quota of six seats for staff of the Institution, which was allotted to the candidates is regardless of religious beliefs and therefore the staff quota is not connected with the Christian minority status.

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7(d). The learned counsel would submit that when 60% is allotted for oral interview, the question is, as to whether such weightage actually distorted the written examination and marks secured in the qualifying examination, especially when the Supreme Court has held that the allocation generally for interview may not be more than 15% by referring to Ajay Hasias's case (1981 (1) SCC 722) and also in Mohinder Sain Garg Vs. State of Punjab (1991 (1) SCC 662), apart from Ashok Kumar Yadav vs. State of Haryana (1985 (4) SCC 417). His submission is that the admission to the professional courses must be based on merit subject to objective and rational procedure of selection as laid down by the Supreme Court in T.M.A. Pai Foundation case (2002 (8) SCC 481) and the merit should be the criteria.

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7(e). By placing reliance on the judgement of St. Stephen's case, he would also submit that the oral interview as a supplementary test cannot be taken as exclusive test for assessing the suitability of candidates and the identifying circumstances can be only,

(i) common qualifying examination which would enable comparison of the relative merit of candidates;

(ii) a single/same Interview Committee that interviewed every candidate; and

(iii) admission was based on a consensus taking into account the views of each member of the common Interview Committee.

7(f). He would also submit that inasmuch as there are no norms prescribed for admission, which is objective and transparent, the interview by which 60% of mark is given cannot be treated as transparent and it will only result in nepotism and arbitrariness.

7(g). He further submit that the interview process even if it is legal, it must be connected with the object to which the candidate is seeking admission. His further submission is that the first respondent has never revealed the selection process, the initial and/or final results. He would submit that the selection process in the interview based on poverty; overcoming social/family hardship and societal/charitable activity was identified only in respect of one candidate as per the papers produced before the Court. Therefore, according to him, the entire process of selection followed by the Institution are opposed to the triple test of merit, transparency and non-exploitative.

8. On the other hand, Mr. Anil Divan, learned senior counsel appearing for the Institution while referring to the special features and unique nature of the Institution has forcefully contended that the uniqueness of this Institution has been consistently recognised by the Supreme Court from 1993 in various orders passed from time to time, including the latest judgement in P.A. Inamdar's case (2004 (8) SCC 139). He would submit that uniqueness of the Institution lies in the commitment to the care of the under privileged, women and children following the footsteps of the founder Dr.Ida Sophia Scudder. He would also submit that the tuition fee charged for MBBS course for the last several years is only Rs.3000/- per annum, much less than the fee fixed by the State Government in its Medical Colleges and also lower than the fee fixed by the Committees constituted as per the direction of the Hon'ble Supreme Court. He would submit that the motivation is to serve through the selection process and strengthen by modified Gurukul system of education with compulsory residence in hostels and assigning students as "Foster Children" to Faculty families. The idea is to create a potent re-inforcing factor. He would submit that the Institution has been admitting students on All India basis with an Entrance Examination and interview from 1948 and the same has never been challenged at any point of time in any Court of law and according

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to him the system evolved by the Institution has been subsequently followed by other institutions like All India Institute of Medical Sciences. He would also submit that every single student called for interview is academically meritorious and qualified to undergo the training as a Doctor and elaborate interview process assesses the suitability and adaptability for that training to be imparted in the Institution, which is unique in keeping with its mission and objectives.

8(a). He would elaborately clarify as to how the interview was conducted for three days with a close scrutiny of candidates at every stage and as to how the Group Observers have spend with the candidates to assess their suitability for training at Vellore. He has submitted that the Group Observers are from senior faculty of the Institution who interview them individually based on the pre-established criteria and guidelines to assess their suitability for being trained as Doctors at the Institution. He has also taken pain to explain the stanine system, as to how the system has been acclaimed world wide and followed without any objections from any part and he has also explained as to how the grading system in respect of each subjects have been in stanine mode and as to how they are converted from Grade to Score and Score added upto Preliminary Test Average (PTA) Grade.

8(b). The learned senior counsel would also place reliance on the judgement of the Supreme Court in St. Stephen's College vs. University of Delhi (1992 (1) SCC 558), wherein the Supreme Court has permitted to allot 100% marks for interview having regard to the objective and purpose for which the Institution was established, by taking into consideration of the judgement in Ajay Hasia's case (1981 (1) SCC 722) and the same was subsequently considered and approved by the 11 Judge Bench of the Supreme Court in T.M.A. Pail Foundation case (2002 (8) SCC 481).

8(c). He would also submit that short listing of candidates for calling for interview was based on academic merit by taking into consideration of marks in each one of the five subjects in the entrance examination and by Grading Standard Nine or Stanine system. In respect of the reservation of six seats for children of staff he would refer to the judgement of the Supreme Court in P.A. Inamdar's case, wherein the allotment of seats under NRI category subject to not exceeding 15% for the purpose of utilising the money received under the said category for benefiting the students, such as economically weaker section of the society was approved.

8(d). According to the learned senior counsel, the first respondent Institution does not have the NRI quota or Management quota or any reservation for the Founders of the Institution and the six seats are given to the benefit of the staff of the Institution, who are the human wealth, to whom the small privilege has been extended. He would also submit even allotment of six seats are clearly based on the guidelines as stated in the prospectus, viz., that the staff members should have completed 10 continuous years of service in the Institution or retired or died after having worked in the Institution for 10 continuous years, for whose children, the criteria of eligibility has been conferred, of course by following the merit

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system. He would also submit that such reservation is having a reasonable and intelligible differentia and having a rational basis.

8(e). He would also submit that the Institution is a All India Institution having been established in the year 1900, catering to the needs of the minority, viz., Christian, and therefore, it cannot be said that it should cater to the required needs of the Christian minority from the State of Tamil Nadu alone, especially when All India character of the Institution has been recognised by the Universally.

8(f). He would submit that in respect of the admission of Christian students from States where they are majority, it is only sprinkling number of students who have been admitted and that is also recognised by the Supreme Court in Kerala Educational Bill case (AIR 1958 SC 956).

9. We have heard Mr. R. Muthukumarasamy, learned senior counsel for the appellant in WA.No.812 of 2007, Mr. Vineet Subramani, learned counsel for the appellant in W.A.Nos.494 and 495 of 2007 and Mr. Anil Divan, learned senior counsel for the Institution and perused the order of the learned single Judge apart from all other records.

10. On the total analysis of the issues involved in this case, the following points are arise for consideration:

(i) Whether the process of selection and its procedure and method followed by the Institution for selection of First Year MBBS course in the year 2006-2007 is fair and can be treated as the selection based on merit and transparent. Broadly this includes the marks allotted for the competitive written examination, group tasks and the validity and legality of allotment of 40% marks for interview and the method of Stanine Grading system?

(ii) As a minority educational Institution claiming protection under Article 30 of the Constitution of India, can the Institution be permitted to admit only a few students belonging to the minority religion from the State of Tamil Nadu, while the test for determining minority is by way of State as the unit?

(iii) Whether the reservation of six seats for the children of eligible members of the staff of the Institution is reasonable?

(iv) Whether the reservation of 10 seats for the candidates from socially and economically backward States is permissible, when the States from which students were admitted were not minority in respect of Christian religion based on population?

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11. Before adverting to the above said points, we are of the view that consideration of the nature of the Institution, objects for which it was started and its working in these years and also the various orders passed by the Apex Court in respect of the Institution relating to the manner of admission, will give a definite and lasting solution to the issues involved in this case.

12. The Christian Medical College, Vellore, which is governed by a registered Society called Vellore Christian Medical College Association enumerates in its bye-laws, its objectives as "the establishment, maintenance and development of Christian Medical College and Hospitals in India, where women and men shall receive an education of the highest grade in the Art and Science of Medicine and of Nursing, or in one or other of the related professions, to equip them in the spirit of Christ for service in the relief of suffering and the promotion of health." The Institution is an Un-aided, Minority Educational Institution, without collecting capitation fees from the students and is in existence for over 100 years. In the past nearly 55 years, the Institution has been following the method of admission on the All India Entrance Examination, followed by an in-depth interview.

13. The Institution was started in the year 1891, when 21 year old Ida Sophia Scudder, the daughter of an American Missionary staying in Tindivanam was virtually affected by the death of three young Indian women during child birth for want of proper medical aid. It was with the idea that the women in India needed women Doctors to look after them, the said Ida Scudder is stated to have returned to United States and graduated as the First Woman Doctor from Cornell University and after obtaining training in Obstetrics and Gynaecology, she returned to India in 1900 and started a small clinic at Vellore. Thereafter, she started Training Compounders in 1903 and Nurses in 1909. Due to the intervention of the First World War, she was able to start the Missionary Medical School for Women, to make them as a licentiate medical practitioner only in the year 1918. In 1942, the course was upgraded to MBBS course, affiliated to Madras University. Admission was thrown open for the MBBS course in the year 1947. Initially, the Institution which was started in the Madras Presidency, which included the present Tamil Nadu and other States of Kerala, Karnataka and Andhra Pradesh, and gradually the activities of the Institution was expanded by making the admission of students on All India Entrance Examination followed by an in-depth interview from the year 1948. In the year 1960, the number of intake of under-graduate MBBS students was increased to 60 and thereafter, large number of Higher Speciality Courses, Post-graduate Medical courses, Allied Health Science courses and Courses in Nursing have been developed.

14. It is also stated by the Institution that on the analysis of the data in the Alumni Office of the Institution in 2002, it has shown that upto 1992, 66% of the Medical Graduates from the Institution were serving in India and 4 out of 5 of them were in Rural areas. The Institution is the first in the country to admit students on All India basis with an Entrance Examination and interview from 1948 and it also remains a fact that till date the admission procedure has not been challenged in any Court of law, except in the

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present writ proceedings. Therefore, the emphasis is on the objectives of the Institution to the ideal of service to the disadvantaged and the marginalised based on the mandate by Christ and it is in accordance with the said ideology the process of selection is made. It is with that background the selection process as enumerated above have been followed by the Institution in these long number of years.

15. The said procedure which are unique and followed by the Institution under the special circumstances stated above, viz., in accordance with the spirit of the religious and service motive has been consistently recognised by the Supreme Court from 1993, as it is seen on records. It is on record that the Institution, in 1993, has approached the Apex Court by filing W.P.No.482 of 1993, which is also stated to be forming part of the batch of cases decided in T.M.A. Pai Foundation case (2002(8) SCC 481). That was the time when based on the judgement of the Supreme Court in Unni Krishnan's case (1993(4) SCC 111), the State Government has directed the Institution and other Institutions to implement the Scheme framed in the above case. The said writ petition was filed under Article 32 of the Constitution of India, challenging the said action of the State Government and the Apex Court by an interim order dated 05.07.1997, while admitting the writ petition passed as follows:

> "Issue notice returnable within 10 days.
> In the meantime, the State of Tamil Nadu shall not allot any seat in the petitioner Institution for admission to any other candidate not selected by the petitioner. "

The Five Judge Constitution Bench of the Apex Court while dealing with the prayer in the said Writ Petition, viz., W.P.No.482 of 1993 and taking note of the fact that the admission in the Institution is done on the basis of merit, without capitation fee, fee charged is not more than the one charged by the Governmental Institutions and there has been no complaint about the working of the Institution, has permitted the Institution including another Institution to admit students by following the procedure on the basis of the admission done in earlier years, however, stating that it is open to the Government to bring any irregularities pointed out and if such irregularities are brought to the notice of the Court, it would result in serious consequences. That was the judgement rendered in Shahal H. Musaliar vs. State of Kerala (1993 (4) SCC 112). The following portion are relevant for the purpose of this case.

> " 15. The petitioner in W.P. No. 482 of 1993 runs a medical college at Vellore in the State of Tamil Nadu. According to the petitioner, it is a well-reputed institution, admission to which is made on the basis of an All-India entrance test conducted by the petitioner. It is stated that admissions are made on the basis of merit. It is submitted further that the college does not charge any capitation fee, that the fees charged by it is not more than the fees chargeable in similar

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governmental institutions and that there has never been any complaint about the working of the petitioner-institution. Shri Sitaraman, learned counsel for the State of Tamil Nadu does not dispute the above averments though we may record again that no counter has as yet been filed in the matter. It is submitted by Shri Salve for the petitioner that during the vacations, a learned Single Judge has made an interim order in this writ petition directing the State of Tamil Nadu not to allot any seats to the petitioner-institution for admission of candidates not selected by the petitioner. Shri Salve, learned counsel for the petitioner submitted further that the process of admission is complete though admissions as such have not been made in view of the aforesaid orders of this Court.

16. Having regard to the above circumstances, we permit the petitioners in the above two writ petitions to admit students to their colleges on the basis of entrance test conducted by them and on the same basis on which admissions were made by them in the said colleges in the previous academic year. After completing the admissions, the petitioners shall furnish full particulars of the students admitted, the categories, if any, whereunder they were admitted and all other particulars relating to their admission. This information should be furnished to the competent authority, to the University to which the said colleges are affiliated and to the Secretary, Education Department, Government of Karnataka/Tamil Nadu. The said authorities shall verify whether the admissions have been made by the petitioners in accordance with the directions given herein. In case of irregularity, any of the said authorities shall be entitled to call upon the petitioner to rectify the said irregularity. It shall also be open to the competent authority, University and the Government of Karnataka/Tamil Nadu to bring any such irregularity to the notice of this Court by way of an interlocutory application for appropriate orders in that behalf. It is made clear that any violation of the directions given herein by the petitioners shall entail serious consequences inasmuch as the above orders are made based upon their representations and even before a counter-affidavit has been filed by the respective respondents in view of the urgency expressed by them."

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16. That was again reiterated by the Five Judge Constitution Bench in T.M.A. Pai Foundation and others Vs. State of Karnataka and others in W.P.No.555 of 1993 dated 05.04.1994, in which W.P.No.482 of 1993, filed by the Institution was also forming part. The order runs as under:

> "... Similarly as regards Writ Petition No.482 of 1993, it was observed that according to the petitioner in that case the medical college run by it at Vellore in the State of Tamil Nadu is a well reputed institution, admission to which is made on the basis of All-India entrance test conducted by the petitioner and that the admissions are made on the basis of merit and the fee charged by it is not more than the fees chargeable in similar governmental institutions and that there has never been any complaint about the working of this institution and it was observed that this fact was not disputed by Shri Sitaraman, learned counsel for the State of Tamil Nadu. ..."

17. Likewise, in I.A.No.5A in WP.(C)No.482 of 1993 filed by the Institution for the year 1995-1996, the Apex Court by order dated 06.03.1995, permitted it to follow the same process of admission, which reads as under:

> " The petitioner may grant admission for academic year 1995-96 for the MBBS First Year Course and also the other allied courses as per directions contained in the interim order of this Court dated August 18, 1993 and April 5, 1994 by conducting their own entrance test examination. I.A. is disposed of accordingly.
>
> This court has been permitting the holding of entrance tests by the institutions themselves for the last 3 years by interim orders. The Registry to place the papers before Hon'ble the Chief Justice for obtaining fresh directions regarding constitution of the 7 Judge Bench to hear the case which was already heard by the 7 Judge Bench at length."

18. Similar orders were passed by the Apex Court for 1996-1997 in I.A.No.6 in W.P.(C)No.482 of 1993 dated 01.02.1996; for the academic year 1997-1998 in I.A.No.7 in WP.(C)No.482 of 1993 dated 29.01.1997; for 1998-1999 in I.A.No.8 in WP.(C)No.482 of 1993 dated 16.01.1998. Ultimately, it was in T.M.A. Pai Foundation case, the Apex Court has delivered judgement on 31.10.2002, recognising the rights of minorities under Article 30 of the Constitution of India and also the rights of Un-aided Minorities like that of the first respondent Institution. The Supreme Court in T.M.A. Pai Foundation case has prescribed certain percentage of seats to be allotted to the Government to satisfy the local needs in para 68, which reads as follows:

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"68. .... For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. ... "

19. It is based on the said paragraph of the judgement of the Supreme Court, the State Government has issued G.O.Ms.Nos.96 and 99, requiring the Institution to admit students only in respect of 60% of the seats from the minority quota preferably from the All India Common Entrance Test held by the Institution and the balance 40% to be given to the State Government to be filled up through the Common Entrance Test held by the Government. It was challenging the said Government Order, the Institution has filed W.P.No.261 of 2003 in the Supreme Court and by a detailed interim order dated 03.07.2003, permitting the Institution to follow the same procedure for the academic year 2003-2004, the Apex Court has ordered as follows:

"Heard on the question of grant of interim relief. It is not disputed that the petitioner-institution is an unaided minority medical college and the admissions are made on merit based on All India Common Entrance Test conducted by the petitioner. The learned counsel for the petitioner states that the petitioner College does not charge any capitation fee. The college has 60 seats for M.B.B.S. Course. Presently the seats are being filled up in the following manner:

Seats reserved for Minority Community	45
Seats kept apart voluntarily by the petitioner Institution for the following categories:	
1. Open Merit	7
2. SC/ST	3
3. Economically Disadvantaged	4
4. Central Government nominee	1
Total	60

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The learned counsel for the parties have made their extensive submissions based on the 11 Judge Bench decision of this court in T.M.A. Pai Foundation and others vs. State of Karnataka and others in (2002(8) SCC 481). Our attention has been invited, in particular, to paragraph Nos.68, 138, 139, 144, 145, 149 and 161 (question No.4 and answer thereto). Prima facie, we are of the opinion that the allotment of seats in an unaided Minority Institution cannot be controlled by the Government. It is therefore, directed that for the current year i.e. 2003-2004 the allotment of seats shall be done in the same manner as has been done hitherto i.e. 45 seats shall be reserved for Minority Community and 15 seats shall b e kept apart from the categories - open merit, SC/ST, economically disadvantaged and the Central Government nominees, as has been done before.

This is an interim arrangement and shall be subject to final decision in the writ petition.

However, all these allotments shall be without violating the rule of merit. "

20. Again, the said writ petition filed by the Institution was heard by the Five Judge Constitution Bench of the Apex Court together with several related matters in Islamic Academy of Education vs. State of Karnataka (2003 (6) SCC 697), wherein also the Supreme Court has again recognised the special features of the first respondent Institution in para 17, as follows:

" 17. At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical college, Vellore, St. John's Hospital, Islamic Academy of Education et. The claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission

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procedure for, at least, the last 25 years to apply to the Committee set out hereinafter. "

21. It was consequent on the judgement of the Constitution Bench in Islamic Academy Education case stated above, the Supreme Court has disposed of W.P.No.261 of 2003, filed by the Institution on 18.09.2003 with the following order:

> " Notwithstanding, the orders of resolutions made by the Government, if any, these matters are disposed of in the same terms as set forth in the decision of this Court in Writ Petition No.317/1993-T.M.A. Pai Foundation & Ors.Etc. Vs. State of Karnataka & Ors.Etc. And connected batch decided on 31st October, 2002 and in Writ Petition (C) No.350 of 1993-Islamic Academy of Education and Ar. Vs. State of Karnataka & Ors. And connected batch reported in 2003 (6) SCALE 325.
>
> All statutory enactments, orders, schemes regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceedings. "

Therefore, it is clear that during 1993 to 2003, the Institution has been permitted by the Apex Court to follow its own procedure in admitting students.

22. It is the case of the Institution that after the judgement delivered in Islamic Academy Education case, permitting the constitution of Committees to supervise the admission and fees procedures and inasmuch as the Committee was not constituted by the State Government, the Institution again filed W.P.No.7380 of 2004 before this Court, challenging the order of the Government in issuing direction to the Institution, without constituting a Committee and this Court by an order dated 24.03.2004 in WPMP.Nos.8725 to 8727 of 2004 in W.P.Nos.7379 and 7380 of 2004, has permitted the Institution to follow the same procedure of admission in respect of the academic year 2004-2005 as follows:

> " 2. In view of the decision of the Supreme Court in 2003 (6) SCC 697 (cited supra): the earlier orders of the Supreme Court in W.P.Nos.261 of 2003 & 482 of 1993 and other series of orders passed by the Supreme Court allowing the petitioner to follow the earlier arrangement, there will be an order interim stay of the impugned order as prayed for and interim injunction is also granted for the very same reasoning. Learned Government Pleader is directed to take notice."

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and it was thereafter, the State Government has constituted Two Committees, one for supervising the admissions and another for fees structure.

23. It is also relevant to point out that in the meantime, the Supreme Court was moved by some of the Institutions similar to that of the first respondent for clarification to follow the same procedure of admission, since there appeared to be a conflict between paragraphs 17 and 19. Ultimately, the Apex Court by order dated 30.07.2004 passed in W.P.No.330 of 2004 has given clarification to the said paragraphs in Islamic Academy case in 2003(6) SCC 697, which was as follows:

> " There appears to be an obvious conflict between paragraph-17 and paragraph-19. For the time being, we prefer to adopt the reasoning in para-17 which allows a minority professional institute which has been carrying on the same procedure for the last more than 25 years to adopt its own procedure for admission in respect of its institution. "

24. The said writ petition, viz., W.P.No.330 of 2004, in which the first respondent Institution has filed an intervening petition, viz., I.A.No.5 of 2005 was decided along with large number of batch of cases by the Supreme Court in the recent pronouncement in P.A. Inamdhar and others vs. State of Maharashtra (2005 (6) SCC 537). The Supreme Court has again confirmed about the unique feature and the admission procedure of the minority educational institutions, delivered judgement on 12.08.2005 in the following words.

> " 17. The majority opinion carved out an exception in favour of those minority educational professional institutions which were established and were having their own admission procedure for at least 25 years from the requirement of joining any common entrance test, and such institutions were permitted to have their own admission procedure. The State Governments were directed to appoint a permanent Committee to ensure that the tests conducted by the association of colleges are fair and transparent."

25. In the meantime, based on the consistent orders of the Supreme Court, the first respondent Institution has filed an application before the Permanent Committee for Common Entrance Test for Private Educational Institutions in Tamil Nadu, seeking permission to have their own admission procedure. That petition was dismissed by the said Committee on 12.07.2005. On the application filed by the first respondent Institution in I.A.No.6 of 2005 in W.P.(C).No.261 of 2003, praying for an order of stay of the Committee's order dated 12.07.2005, the Supreme Court in the order dated 25.07.2005, while granting stay has permitted the first respondent Institution to conduct admission for the year 2005-2006 in the same manner as it was done in 2004-2005 as follows:

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" Having heard the learned counsel for the parties and pending decision by the Constitution Bench in S.L.P.(C).No.9932 of 2004 and connected matters, we stay the operation of the order of the Committee dated 12th July, 2005 and permit the applicant-College to conduct the admissions in the same manner in which it was conducted in the Last academic year i.e.2004-2005."

26. With the disposal of all the cases in the recent judgement of the Supreme Court in P.A.Inamdhar's case, the applications and the Writ Petitions have got merged. Therefore, the Institution has moved this Court by filing W.P.37245 of 2005 and prayed for an order of stay of the Committee's order dated 12.07.2005 and this Court by order dated 18.11.2005 in WPMP.No.39877 of 2005 in W.P.No.37245 of 2005, has granted an order of interim stay. In the mean time, for the year 2006-2007, when an application was made before the Committee, the Committee, after elaborate enquiry, has passed orders on 10.06.2006, accepting the procedure of admission followed by the Institution, however, rejecting the reservation of six seats for admission of staff of the Institution, against which the Institution has filed W.P.No.18384 of 2006.

27. In this regard, it is relevant to point out the order of the Permanent Committee for Common Entrance Test for Private Educational Institutions dated 10.06.2006, which reads as follows:

" For the above reasons we hold that except for clause(b) of para 21 of the representation, the procedure for admission seems to be fair and all the seats are to be filled up by common entrance test and from the brochure, it is seen that is transparent. The fee fixed by the institution also seems to be non exploitative and to a certain extent much less than what the Government has fixed. That condition also satisfies in this case.

6 Seats which are now reserved for children of staff of Christian Medical College will have to be distributed among candidates by open merit quota or open quota of Christian minority candidates. There can be no reservation for members of staff of the college.

The fact that the college has been following its own admission procedure ever since 1948 is not a matter of dispute. It is true that from 1993 onwards there was litigation and on the basis of interim orders, the college was allowed to follow its own procedure by the Apex Court.

As per the orders of the Supreme Court, the college was also submitting the statements explaining the basis on which admissions are made.

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The same was not questioned by the State till date. It is true that these interim orders were obtained at a time when no objection was filed by the State. But that cannot be an answer to say that admissions so far made is neither fair, transparent or non exploitative.

The special feature which have already extracted also shows that this institution is committed to certain ideals. It is only proper on our part to take note of the special survey conducted by India Today - AC Nielsen - ORG - MARG survey of colleges published in India Today issue dated 5.6.2006. About the applicant college, it is stated thus "At CMC, Vellore quality education is a given. With a unique spread of courses, the institute has won accolades for its community health and development programmes, which cover lakhs among the local population. The college is also involved in epidemiological studies and has recently tied up with the Department of Biotechnology to promote translational research in stem cells. In many ways, CMC is only living up to its motto: "Not to be Ministered unto, but to Minister".

Even though Committee is not bound to accept the statement, that does not prevent us to take note of the reputation of the college and its commitment. We find that during the year 2002 CMC, Vellore ranked first among all the medical institutions in India and in the year 2006, it has got 2nd rank.

Apart from all the above facts, it is also evident that candidates who pass the graduation course will have to serve at place where more medical facilities are needed. They are asked to serve in rural areas. In case the candidate fails to do so, he has to face contain serious consequences. The readiness of the candidate to serve the needy is a matter which is taken into consideration by the institutions while considering merit. What the institution does is a team or a missionary work.

Taking into consideration the above facts and special features, we are of the view that permission could be granted to CMC, Vellore to have their own admission procedure subject to what is stated above. We further direct that immediately after the admissions are over, the college has to submit to the Committee and the Directors of Medical Education the following particulars.

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1. Copies of total number of applications received for common entrance test and admission.

2. Rank list of all the candidates along with the marks obtained in eligibility qualification examination and CET with roll Nos.in both examination.

3. Admission list of all candidates with their roll No.in qualifying examination and CET along with all supporting documents submitted by the candidates at the time of admission.

4. Such other particulars which the Committee may ask for should also be submitted."

28. Therefore, the entire analysis of the indisputable facts and the consecutive orders of the Apex court in permitting the Institution to proceed with its procedure as narrated by the Permanent Committee constituted by the State Government itself shows as a standing testimony and approval by the Apex Court for the procedure followed by the Institution in the matter of admission to MBBS course in these years. While so, the power of judicial review of this Court in this regard should be limited in the interest of maintaining judicial discipline. However, since the above points are raised in these appeals, we would proceed to answer the same keeping in mind the consistent approval of the manner of selection made by the Institution in these years by the highest Court in the country.

29. In respect of the process of selection, one of the main points raised by the learned senior counsel for the appellants is that, the conversion of marks into a grading system under Stanine grading is not transparent and therefore it cannot be said that the selection based on the said method should be deemed to be on merit basis. Regarding this process, it is relevant to point out that the first respondent Institution conducts All India Common Entrance examination on 5 papers, viz., Physics, Chemistry, Biology, General ability and Speed and Accuracy with each paper having 60 multiple choice objective questions that carry one mark each with a total of 60 marks per paper and a total of 300 marks for the five papers together.

30. It is seen that each year new questions are invited from teachers in High Schools/Colleges in different parts of the country and are added to the question bank maintained by the first respondent Institution and the questions which are used are deleted and the papers for each year are newly formulated with a balance of evaluated questions from earlier years and new questions. When the admission process starts by December of the previous year, the question papers are prepared and kept under the safe custody. Optical Mark Readable (OMR) answer sheets are also obtained, each sheet scanned to ensure that no additional markings are present, and then sealed by the Registrar and the said process is completed in the middle of April.

31. The All India Entrance Examination, was held on 26th May, 2006 for the year 2006-2007 and the process of valuation commenced. As stated by the first respondent Institution, the marks obtained in each of the 5 papers were divided statistically into nine equal bands. Candidates in the highest 4 percentile graded as A, the next 7 percentile as B+ and so on till the last or 9th Grade is U, the lowest

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4 percentile. This banding is done by a computer program. Thereafter, the process of grading starts, where the highest mark obtained by a candidate in the subject is taken as 100 percent in working out the percentiles. The highest mark in Biology in 2006 was 54/60, the lowest marks in Grade A-47.2/60, and the highest mark in Grade B+ 47.0/60.

32. It was, at this stage, the marks in individual papers are converted to grades and there is no overlap of marks at the border between two grades when candidates are ranked in descending order according to the marks secured by them in each subject. The lowest mark in Stanine Grade A was 47.0 and the highest mark in Stanine Grade B+ was 46.8.

The concept of Stanine Grade is as follows:

Stanine Grade 1	1 (A)	-	4%	Very superior
	2 (B+)	-	7%	Superior
	3 (B)	-	11%	Considerably above average
	4 (C+)	-	17%	Slightly above average
	5 (C)	-	22%	Just average
	6 (C-)	-	17%	Slightly below average
	7 (D)	-	11%	Considerably below average
	8 (F)	-	7%	Poor
Stanine Grade	9 (U)	-	4%	Very Poor

33. The Stanine Grading for 2006-2007 in each subject as given in the table runs as follows:

	Physics	Chemistry	Biology	General Ability	Speed and Accuracy
	High Low	High Low	High Low	High Low	High Low
A	49.4 39.2	55.0 47.0	54.0 47.2	55.0 46.4	52.8 41.2
B	39.0 35.2	46.8 43.2	47.0 44.4	46.2 43.0	41.0 36.4
C	35.0 31	43 38.8	44.2 41.0	42.8 39.6	36.2 31.8

Therefore, the Grades are assigned for each of the 5 papers in All India Entrance Examination, then they are given an equivalent numerical score, wherein the higher grade is given a score of 1 and the last grade is given a score of 9 in the following manner:

Grade	A	B	B+	C	C+	C-	D	F	U
Score	1	2	3	4	5	6	7	8	9

The composite grade of all the five subjects to determine academic merit in the All India Entrance Examination or the "Preliminary Test Average" (PTA) the numeric score for each candidate in each of the five papers is added and a new stanine derived and final score range is determined as follows:

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Grade	Total Number of Students in Grade	Total score range for each grade	Highest mark in Grade	Lowest mark in Grade
A	365	5-10	254.8	202.2
B+	683	11-14	220.6	186.0
B	984	15-18	197.8	165.2

Therefore, by demonstration it is clear that theoretically a candidate who performs consistently and has a B+ grade in all 5 papers would have been in a final Grade of A , even though the candidate was not in the A grade for even one subject. It is stated that the said stanine system scoring is widely recognised and followed inter-nationally and the first respondent Institution has been following it for the past 5 decades, about which admittedly, there is no complaint in these years.

34. Likewise, interview is conducted for three days with three assessments for Minority candidates. For bible knowledge to the score of 10 marks stanine grade is assigned. That apart, in case of tasks for 20 marks, each candidate is given 4 tasks, two are group tasks and two are individual tasks. Each task is carefully designed and a number of characteristics are marked by atleast three Test Observers, viz., Senior Most Faculty Members of the first respondent Institution. For each task, independently a final stanine grade is assigned. That apart, it is stated that two senior faculty are assigned to groups of 6 to 8 candidates, who are grouped according to their age and sex and the Group Observers spend two days with the group interview with them individually in depth and in addition observe them as part of the group during tasks and during meal times etc. and based on a pre-agreed scheme write a detailed report on the candidate and assign a grade from A to U based on the characteristics detailed in the report.

35. We have gone through some of the detailed reports given by the Group Observers in respect of selected and non-selected candidates. We have also gone through the report of Group Observers in respect of P. Arunkumar, appellant in W.A.No.494 of 2007, which reads as under:

> " 18 year old boy; both parents-teachers; from a middle class background in South India. His father seems to be a strict disciplinarian, with whom he seems to have limited interaction. His mother has been his confidant. Though he studied in an English medium school, he has difficulty in expressing himself in English, and so was slightly anxious in the beginning. He has several relatives in the medical field - though none from his immediate family. He spent a year at a coaching class for MBBS after the twelfth standard. His "weak" subject was Biology-as he found it difficult to 'memorize' the details. He won a few interschool table tennis, competitions in his junior school, but had to give up his

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activities after the 10th standard. He says he used to collect stamps and look after fish when he was young-though he admits he was not very serious about them. He has no other hobby; and does not read books or participate in quiz/debating competitions. His knowledge of current activities including the Middle East problems is average. He is aware of the local politics in his town, though has no active involvement in it. He is a member of the youth fellowship at church, and is regular in attendance in church. However, there does not seem to be any involvement of significant depth. He is tolerant of all religions.

In the group tasks, he was more of a passive participant-though not disruptive. He was not pushy. He had problems with ragging while in a hostel - on language issues - but being the victim, could not react - though was reduced to tears on several occasions. He had visited a few CSI hospitals (for a few hours) on the advice of his aunt before coming to CMC. He visited the general ward in one hospital, but does not seem to have been struck by any specific aspect of the work there. He has not done any social service of note, and does not seem to have thought about the healing ministry of the church and its hospitals.

Commitment to serve - 5/10
Christian Commitment-6/10"

We have also gone through a similar report in respect of another appellant-J. Jotheebun and also another selected candidates. We feel it relevant to reproduce the reports in respect of two selected candidates.

" 19-year old Aneez Joseph is a quiet and charming girl from a rural area in south India. Her father is a daily wage construction worker, and her mother a house wife. Most of her childhood friends did not pursue studies actively, but Aneez's parents saw the potention in her and encouraged her to pursue her studies. Her excellent performances in school saw her teachers, friends and relatives pitch in to help with school fees, uniforms, books and all other needs that her parents could not meet for her due to their economic hardships. She consistently topped her class till class X; coming to an English-medium school for the first time in Standard XI saw her grades slip momentarily, but she was back at the top of her class in Standard XII. Family problems such as a major illness that her father went through as well as his recurrent problem with alcohol have not distracted her single mindedness

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towards studies.

Her extra-curricular activities include embroidery and reading. She is a constant help to her mother around the home, and has also been part of a team that swept the class rooms. The absence of Sunday school teachers in her church has made her take up that role as well from time to tome. She has a simple faith, and is able to draw strength from her belief in God,rather than look for sympathy from others around her.

Her primary drive to excel in studies is to reach a position where she can be of use to other lesser privileged members of her community. She has been helping other younger children in her neighborhood with their studies, and sometimes has received small amounts of financial compensation for these efforts. She has also periodically visited disabled children's homes to spend some time with them and buying sweets to share with them. Her firsthand experience of economic hardships is combined with a deep desire to be of use to her social situation. She has been influenced by reading the life story of Mother Teresa, and is challenged by her model of selfless service.

Although she evidently has some limitations in conversing in English fluently, she cheerfully participated in the group tasks, and her language limitations did not come in the way of the relationships she built with her colleagues in the group.

Her quiet determination and confidence marks her out as a person who will make the most of any opportunities that will come her way, and, in my opinion, the CMC environment will provide just the right spark she needs to go a long way.

COMMITMENT TO SERVE +
CHRISTIAN COMMITMENT +"

" This quiet and soft-spoken nineteen year old girl comes from an economically disadvantaged background in a rural area. Her father is a construction worker, her mother is a housewife and she has a sister who is four years younger to her. Her father lost his job in a company when she was seven years old. Since then he has been a daily wage earner, dependent on the availability of work, as a manual labourer at construction sites. The family has had several major upheavals since the father lost his job. They were staying with her grandfather in the family home till she was in the IVth Standard. Following a quarrel, her father was sent out of the joint family home. They moved into a thatched one room hut without

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electricity or water and stayed there for three years. She has memories of studying with a lantern, fearful if the rain would come in and wet her books and afraid that family members would be unkind to her. With help from one of her father's brother's they moved into two rented rooms. When she was in the Xth standard, her father had a head injury following an accident and though he is now able to go to work, he has not regained his memory and lacks confidence to do even simple tasks on his own. Last year he inherited 5 cents of land from his father and with the help of a loan they have been able to construct a two room house where they now live. Ever since her father lost his job he started drinking alcohol (toddy). Earlier on it was in moderation but now most evenings he is under the influence of alcohol and dependent on it. When he is in a clear mind he is very concerned about his family but the rest of the time he is abusive though he has not harmed either his wife or daughters physically.

She has studied in Catholic schools and topped her class from the kindergarten up to the Xth Standard in the vernacular medium. She then moved to an English medium school and within a year was back again at the top of the class. She was the school topper in the XIIth Standard and in Biology. She won proficiency prizes in all the classes except in the XIth Standard when she changed the medium of instruction. She was made the ambassador of the school in an inter-school quiz and also represented the school in district level mathematics competitions, winning a trophy. Every year she received many books as proficiency prizes and these have been her resource for reading besides the school libraries. One of the sisters from the taught her embroidery and she has taken part in district level embroidery competitions. She has received certificates and cash awards in the school moral science examinations and an award from the Panchayat for scoring high marks.

Her other hobbies include flower making and dress painting. She dans her own clothes, helps her mother in the house and would also sweep the school rooms after class. Her recent innovation has been to take sacks of mud to the terrace of their house and plant vegetables like ladies finger and beans for the family use. She has taken tuition regularly for neighbouring children of various ages. She has not asked for payment but some of the parents have given her small amounts in appreciation of her help. There is a home of disabled adults called the "Home of Faith" very close to her home where her aunt

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(mother's sister) is an inmate due to mental disability. She regularly visits the home and spends time there and helps in small ways. She is very sensitive to people in need and feels drawn to help them. She has been an emotional support to a friend whose father has had to leave the home because of substance abuse.

Her English comprehension is good she can understand conversation fairly well though her expressive language is limited. She had not had the opportunity to hear much spoken English till the Xth Standard, however her English teacher in +2 commends her diligence and dedication to learn which helped her to do well in plus 2 in English medium. As she has such a keen motivation to achieve her goal I think she will soon develop adequate language skills.

Even though she was one of the quieter girls in the group she related well with the others and joined in with the group activities. She was friendly and did not shy away from interacting with them. She took the initiative to make comments during the group discussions in spite of the limitations of language.

The family worship regularly in a Church which consists mainly of people from low income group. She has taken part in Church activities with enthusiasm. She was a regular member of the Sunday school and has won prizes in quizzes. Now she is a member of the youth group and her involvement include taking part in retreats, bible reading and teaching classes. The youth group collects clothes and food and takes it regularly to "Mother Theresa" orphanage and she has been one of the leaders in this involvement. Her mother has been her inspiration and though she has only passed SSLC she has a strong faith and has encouraged her children to trust in God. Her simplicity and thrift have enabled the family to survive on so little. Both her parents have encouraged her to study inspite of her father's dependence on alcohol he communicates his love to her and so she is able to look at him with empathy rather than disdain. She says she has suffered because of the abject poverty she has faced, when sometimes there has been no food to eat. Yet she is grateful to God who has provided so that they have never starved and there has always been a roof over her head even if it has been only a thatched one. Recently during the floods, she saw an old man sitting on a bed. There was knee deep water in the house and she was able to thank God that she had a dry place to stay. She does not talk about her needs but people have quietly found out and supplied many needs. The sisters in the

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schools have waived the fees, some teachers have given her books and clothes, her friends have shared books, stationary and uniforms with her. A friends who went to a coaching class shared all her books and papers with her and even came and studied with her in her home because she could not afford to go to a coaching class. Finally she was able to attend a coaching class in a new centre near her home for two months because they were ready to accept payment in instalments. She is aware that God has taken care of her and she feels this is the reason she wants to help others in need.

She likes to work with people and has a sincere desire to serve the poor. She did not take up an engineering seat last year because she wants to study medicine. She feels it is a great honour to study the "mysteries of the human body" which God has created. When her father was sick the family experienced again the burden of poverty and this has strengthened her desire to provide good ethical medical care for the poor. She feels she has been blessed because she has received timely help in her time of need and so she would like to dedicate her life to serve the poor. As she has lived in a village all her life she feels her needs are simple and few and she is very happy to serve in a rural area.

In conclusion she has a gentle and caring spirit which was evident in the way she spoke of her various involvement. She has been diligent and hardworking and has made good use of the resources that were available to her. What stands out in her story is that she is a "survivor". Her own pain has made her sensitive to those in need around her. There is a also a quiet dignity about her which makes her want to 'earn her keep' and not be inordinately obliged to those who help her. Her resilience, courage and determination in the face of the challenges she has faced are evident and commendable."

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On seeing the reports, we have no hesitation to come to the conclusion that the manner of selection made by the first respondent Institution is in accordance with the objectives of the Institution, which is stated to be service oriented with religious instinct and it cannot be slightly brushed aside as arbitrary.

36. The process of selection for determining the academic merit, ensuring that the minimum marks in the qualifying examination is attained by all candidates and determining the suitability for training as Doctors in this Minority Educational Institution run on all India basis, remains the same for the past 50 years. It is also stated that in order to avoid geographical imbalances in selection process, the first respondent Institution has also given up an inter-

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se merit of Christian minority candidates from each of the Churches and Christian bodies as it was suggested by the Permanent Committee.

37. It is also seen that the stanine method of grading is in existence in many of the Universities in the World. Universally recognised stanine grades as given by the University of Alberta are as follows:

> " Grade Criterion
> All assignments will be given the percentage marks. These percentages will be weighted before a final grade in the Stanine is assigned.
>
> | Grade | Percentage | Grade Points |
> |---|---|---|
> | A+ | 93-100 | 4.0 |
> | A | 90-92 | 4.0 |
> | A- | 85-89 | 3.7 |
> | B+ | 80-84 | 3.3 |
> | B | 76-79 | 3.0 |
> | B- | 72-75 | 2.7 |
> | C+ | 68-71 | 2.3 |
> | C | 64-67 | 2.0 |
> | C- | 60-63 | 1.7 |
> | D+ | 55-59 | 1.0 |
> | D | 50-54 | 1.0 |
> | F | 0-49 | 0 |

38. The University of Minnesota in its deciding terms has recognised the grade of stanine as a method of conversion of students performance. The 9 Grade Stanine is explained in the said University is as follows:

> "Stanine: The name stanine is simply a derivation of the term "star scale. Stanines are normalized standard scores, ranging in value from distribution has a mean of 5 and a standard deviation of 2. Stanines 2 are equal to a ½ standard deviation unit in width, with the middle stanine defined as the range of scores ¼ of a standard deviation below to ¼ of deviation above the mean. Stanines can, more easily, be thought of groupings of percentile ranks (see below), and like percentile ranks xxx status or relative rank of a score within a particular group. Due coarseness, stanines are less precise indicators than percentile ran times may be misleading (e.g., similar PR's can be grouped into different (e.g., PR=23 and PR=24) and dissimilar PR's can be grouped into stanine (e.g., PR=24 and PR=40)). However, some find that using stanine to minimize the apparent importance of minor score fluctuations, and helpful in the determination of areas of strength and weakness. Standard Score, Status Scores, Percentile Rank, Arithmetic Mean, and Deviation.

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Approximate

Percentile Rank

Range	Stanine	Percent of Examinees	Descriptor
96-99	9	4%	high
89-95	8	7%	well above average
77-88	7	12%	about average
60-76	6	17%	somewhat above average
41-59	5	20%	above average
24-40	4	17%	somewhat below average
12-23	3	12%	below average
5-11	2	7%	well below average
1-4	1	4%	low"

39. Likewise, Indiana University of Pennsylvania has also recognised the 9 Scale Stanine with percentile marks:

> Stanine:
> A stanine is a standard score on a scale of 1 to 9. The stanine scale has a mean of 5 and a standard deviation of 2. The stanine is part of the Test Score Distribution Report. Each stanine corresponds to the following range of percentiles:

Stanine	Percentile
9	97-100
8	90-96
7	78-89
6	61-77
5	40-60
4	23-39
3	11-22
2	4-10
1	0-3

40.The Ohio State University has also recognised the Stanine as a method of selection, which reads as under:

> 10-Stanine: The stanine is another transformation of a z-score, using a mean of 5 and a standard xxxxx of 2, with the result rounded to a single digit. When the data are normally distributed, stanines range from 1 to 9, and correspond to the following ranges of percentiles.

Stanine	9	8	7	6	5	4	3	2	1
Percentile	97-99	90-96	78-89	61-77	40-60	23-39	11-22	4-10	1-3

Example: For the student Tara Tester in the above sample report,

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Stanine=(z-score). (standard deviation)+mean = (-38)(2)+5=4"

41. The Standard Grading System is also followed by the Council for Indian School of Certificate External Examination, New Delhi for the international assessment is as follows:

Meaning of Grades

I. EXTERNAL EXAMINATION:

Attainment in a subject is indicated by a grade of which Grade 1 is the highest and Grade 9 the lowest: only Grades 1 to 8 are recorded on Certificates. The interpretation of the grades is as follows:

Grade	
1 }	
2 }	very good
3 }	
4 }	Credit
5 }	
6 }	
7 }	Pass
8 }	
9	Bad

II. INTERNAL ASSESSMENT

The standard attained in Socially Useful Productive Works & Community Service, abbreviated on the he face of the Certificate as SUPW & COMUNITY SERVICE, is indicated by a letter grade, of which Grade A is the highest and Grade E the lowest. Only Grades A to D are recorded on Certificates. The interpretation of the grades as follows:

Grade	Standard
A	Very good
B	Good
C	Satisfactory
D	Fail
E	Fail

42. Therefore, it cannot be said that the Stanine Grade System is unknown in the method of selection for the reason that it is complicated and requires mathematically trained mind to understand. That itself cannot be a ground to brush aside the said method of selection, which can never be stated to be either prejudicial or discriminatory between the candidates.

43. It is not even the case of the appellants that this system amounts to mal-administration. There cannot be any imputation on the first respondent Institution in following the said system, which is

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certainly complicated and unique. These are the matters which are concerning the specialised mind and so long as they do not infringe the triple tests of selection, viz., merit, transparency and non-exploitative, one cannot say that the system should be ignored by lightly setting aside the importance of the same. Especially, as narrated above, the system has been used world wide and even in respect of the first respondent Institution, it is in un-interrupted use for the past five decades without any complaints.

44. As far as the argument regarding the allotment of 40% marks for interview, for the same reasons on which we have accepted the Entrance Examination, we have to only confirm and say that it is not as if the interviews are conducted in three minutes or four minutes as it is stated by the appellants, but as detailed and evidenced before us, they have been conducted for two days by active involvement of the Teachers of the first respondent Institution and making the students to thoroughly be tested to identify them as suitable based on the common objects of the first respondent Institution. Considering the manner in which the interview is conducted, there is absolutely no scope for wide discretion to the Selection Committee to pick and choose any candidate of their choice and the discretion is limited.

45. It is, in this regard, relevant to note that the judgement of the Supreme Court in Ajay Hasia's case, wherein the Supreme Court has directed that not more than 15% of total marks could be allotted for the subjective examination like that of the interview. The said judgement was considered by the Apex Court in St. Stephen's case (1992 (1) SCC 558) and held that even though it is general indication that there should not be more than 15% of the total marks for the interview, percentage of marks conferred depends upon the manner in which the discretion is exercised in the interview and in fact the Supreme Court has upheld the concept of grading system as a method of selection in the following words.

> " 62. The grievance of the University and the Students' Union is that the College Admission Programme is a device to manipulate the merits and not a scientific test to assess performance of candidates. The selection is made by judging the candidates at the interview and the marks secured in the qualifying examinations are not taken into account for selection. The marks are only relevant for calling the candidates for interview. We have carefully examined the College Admission Programme and in our opinion, the contention urged for the University and Students' Union is misconceived. The purpose of the interview is not to reassess or remeasure the merits of the applicants in the qualifying examinations. The marks secured in the qualifying examinations are indeed relevant for selection and the interview is only supplementary test. The College fixes different cut-off percentage of marks in different subjects. The candidates are called for interview in the ratio

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of 1:4 or 1:5 depending upon the candidate's choice of selection of courses of study. The interview is conducted by men of high integrity, calibre and qualification. They are men who deal with education and the students. During the interview, questions are asked to test the candidate's knowledge of the subject and his general awareness of the current problems. The student is also required to furnish in the application form his interest, hobbies, values, career plan etc. Each member of the Interview Committee grades the performance of the candidates and the selection is made for each course of study by taking into consideration the opinion expressed by all the members of the Interview Committee. By consensus the final list of candidates is prepared. The selection is thus made on the basis of the candidate's academic record and performance at the interview keeping in mind his/her all round competence, capacity to benefit from being in the College as well as potential to contribute to the life of College. Judging the performance by grading is a well known method followed in the academic field.

63. The oral interview as a supplementary test and not as exclusive test for assessing the suitability of candidates for college admission has been recognised by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasised that greater weight has perforce to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has generally indicated that interview marks should not be more than 15 per cent of the total marks. (See: R. Chitralekha v. State of Mysore ; A. Peeriakaruppan v. State of T.N. ; Miss Nishi Maghu v. State of J&K ; Ajay Hasia v. Khalid Mujib Sehravardi ; Lila Dhar v. State of Rajasthan and Koshal Kumar Gupta v. State of J&K.)

64. There is nothing on record to suggest that the interview conducted by the Selection Committee was contary to the principles laid down by this Court in the aforesaid decisions. We see neither any arbitrariness nor any vice or lack of scientific basis in the interview or in the selection. The interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice. They have to select the best among those who are called for interview and the discretion is narrowly limited

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to select one out of every 4 of 5. In these premises, we would defer to the choice and discretion of the Selection Committee so long as they act properly and not arbitrarily and act within the recognised principles.

65. The College seems to have compelling reasons to follow its own admission programme. The College receives applications from students all over the country. The applications ranging from 12000 to 20000 are received every year as against a limited number of 400 seats available for admission. The applicants come from different institutions with diverse standards. The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection. It may not also have any relevance to maintain the standards of excellence of education. As observed by this Court in D.N. Chanchala v. State of Mysore (1971 Supp. SCR 608) the result obtained by a student in an examination held by one University cannot be comparable with the result obtained by another candidate in an examination of another University . Such standards depends on several human factors, methods of teaching, examining and evaluation of answer papers. The subjects taught and examined may be the same, but the standard of examination and valuation may vary, and the variations are inevitable. In the premises, the admission solely determined by the marks obtained by students, cannot be the best available objective guide to future academic performance. The College Admission Programme on the other hand, based on the test of promise and accomplishment of candidates, seems to be better than the blind method of selection based on the marks secured in the qualifying examinations. We are, therefore, unable to accept the submission that the College Admission Programme is arbitrary and the University criteria for selection is objective.

66. So in the end we are driven to conclude that St. Stephen's College is not bound by the impugned circulars of the University. "(Emphasis supplied)

46. The right of Minority Institutions to follow its own procedure, of course subject to the transparency and merit in selection of students has subsequently been confirmed by the Supreme Court in T.M.A. Pai Foundation case in the following words.

" 125. In St. Stephen's College case the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came

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up for consideration. St. Stephen's College claimed to be a minority institution, which was affiliated to Delhi University; the College had its own provisions with regard to the admission of students. This provision postulated that applications would be invited by the College by a particular date. The applications were processed and a cut-off percentage for each subject was determined by the Head of the respective departments and a list of potentially suitable candidates was prepared on the basis of 1:4 and 1:5 ratios for Arts and Science students respectively, and they were then called for an interview (i.e. for every available seat in the Arts Department, four candidates were called for interviews; similarly, for every available seat in the Science Department, five candidates were called for interviews). In respect of Christian students, a relaxation of up to 10% was given in determining the cut-off point. Thereafter, the interviews were conducted and admission was granted. Delhi University, however, had issued a circular, which provided that admission should be granted to the various courses purely on the basis of merit i.e. the percentage of marks secured by the students in the qualifying examination. The said circular did not postulate any interview. Thereafter, the admission policy of St. Stephen's College was challenged by a petition under Article 32. It was contended by the petitioners that the College was bound to follow the university policy, rules and regulations regarding admission, and further argued that it was not a minority institution, and in the alternative, it was not entitled to discriminate against students on the ground of religion, as the College was receiving grant-in-aid from the Government, and that such discrimination was violative of Article 29(2). The College had also filed a writ petition in the Supreme Court taking the stand that it was a religious minority institution, and that the circular of the University regarding admission violated its fundamental right under Article 30. This Court held that St. Stephen's College was a minority institution. With regard to the second question as to whether the College was bound by the university circulars regarding admission, this Court, by a majority of 4:1, upheld the admission procedure used by the College, even though it was different from the one laid down by the University. In this context, the contention of the College was that it had been following its own admission programme for more than a hundred years and that it had built a tradition of excellence in a number of distinctive activities. The College challenged the university circular on the ground that it was not regulatory in nature, and that it violated its right under Article 30. Its submission was that if students were admitted purely on the basis

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of marks obtained by them in the qualifying examination, it would not be possible for any Christian student to gain admission. The College had also found that unless a concession was afforded, the Christian students could not be brought within the zone of consideration as they generally lacked merit when compared to the other applicants. This Court referred to the earlier decisions, and with regard to Article 30(1), observed at SCC p. 596, para 54, as follows:

" 54 . The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others."

126. It was further noticed that the right under Article 30(1) had to be read subject to the power of the State to regulate education, educational standards and allied matters. In this connection, at SCC pp. 598-99, para 59, it was observed as follows:

" 59 . The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education amongst the affiliated institutions could be made. The minority institutions cannot claim immunity against

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such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1)."

127. Dealing with the question of the selection of students, it was accepted that the right to select students for admission was a part of administration, and that this power could be regulated, but it was held that the regulation must be reasonable and should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. Bearing this principle in mind, this Court took note of the fact that if the College was to admit students as per the circular issued by the University, it would have to deny admissions to the students belonging to the Christian community because of the prevailing situation that even after the concession, only a small number of minority applicants would gain admission. It was the case of the College that the selection was made on the basis of the candidate's academic record, and his/her performance at the interview keeping in mind his/her all- round competence, his/her capacity to benefit from attendance at the College, as well as his/her potential to contribute to the life of the College. While observing that the oral interview as a supplementary test and not as the exclusive test for assessing the suitability of the candidates for college admission had been recognized by this Court, this Court observed (at SCC p. 602, para 65) that the admission programme of the College " based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations ". The Court accordingly held that St. Stephen's College was not bound by the impugned circulars of the University. This Court then dealt with the question as to whether a preference in favour of, or a reservation of seats for candidates belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the Constitution. After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the

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Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion — the Court stated that: (SCC p. 607, para 79)

"If an educational institution says 'yes' to one candidate but says 'no' to another candidate on ground of religion, it amounts to discrimination on ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination."

It further held that, as pointed out in Kerala Education Bill, 1957 case the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In this regard, it would be useful to bear in mind that the Court at SCC p. 607, para 81, noticed that:

" 81 . Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions."

Therefore, by applying the principles enunciated above, to the factual situation of the manner in which the interview is conducted by the first respondent Institution and grading system made like that of the entrance examination, we do not see any arbitrariness or violation of Article 14 of the Constitution in the said process. As long as the

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procedure followed by the first respondent Institution for admission of students is fair, transparent and non-exploitative, based on merit as held by the Supreme Court in P.A. Inamdhar's case, there is no reason to interfere with the selection process, which is ancient in the first respondent Institution.

47. Coming to the next aspect of six seats to children of staff or members of the first respondent Institution, it is relevant to point out that the Supreme Court in P.A. Inamdhar's case has in fact upheld the validity of allotting number of seats for NRI candidates, of course subject to the condition that merit should not be given a go-bye on the reason that the amount of money collected from such NRIs could be utilised for benefiting students from economically weaker sections of the Society, who can be admitted on subsidised payment of their fees, in the following words:

> " 131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment

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of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate. "

48. In respect of the first respondent Institution it is clear that they do not have the NRI quota or Management quota or any reservation for the Founders of the Institution. Allotment of six seats as stated in the prospectus is clearly based on certain guidelines, viz., that the same is available only to the children of the staff of the Institution who have got 10 years of completed service or after completing 10 years has retired or died, however, subject to merit as a criteria and the intention is, as correctly pointed out by the learned senior counsel for the first respondent to create a human and intellectual wealth of the institution synonyms to the monetary wealth as recommended by the Supreme Court. It is not as if the children of the staff confirming to the said requirement are admitted without necessary qualifications and it is made very clear that the merit can never be compromised and the transparency is in vogue in making selection under this category. The very object as stated in the prospectus that the said allotment of six seats starts from the Senior Faculty down towards Clause IV employees, certainly confirms to the twin tests of reasonable and intellectual differentia and having a rational basis as enunciated by the Supreme Court in Dr.Saurabh Chaudhri vs. Union of India (2003 (11) SCC 146).

49. In view of the above said facts, there is no difficulty to come to the conclusion that the allotment of six sets to the children for the staff of the Institution is on the basis of the explained criteria and subject to the fulfilment of the triple tests and therefore is not invalid.

50. As far as the last point insisted, viz., the admission of Christian students from the States where they are majority, on fact, it is found that it was only a sprinkling number of candidates from the other States were appointed and merely because one student from State of Meghalaya wherein Christians are majority got admitted, the selection cannot be held to be invalid, as long as the test of conserving, the religion and to give thorough, good and general education, to the children belonging to such minority is followed.

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51. Therefore, for all the reasons stated above, predominantly taking into consideration that the manner and method of selection is followed by the first respondent Institution in these more than five decades have been approved by the Apex Court atleast from 1993 till date, and therefore, there is no reason to interfere with the order of the learned single Judge; accordingly, the writ appeals fail and the same are dismissed. No costs.

kh

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government
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5.The Secretary (Health)
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+ 3 ccs to Mr. S. Ramasubramaniam Associates SR No. 45930
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Common Judgement
in
W.A.Nos.494, 495 & 812 of 2007

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